IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 232 of 2005
WITH
CIVIL APPLICATION NO.4197 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAKHDHIRBHAI M RABARI & 1 - Appellant(s)

Versus

MANVIJAY ASSOCIATION & 7 - Defendant(s)

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Appearance :

MR DHAVAL M BAROT for Appellant(s) : 1 - 2.
MR SHITAL R PATEL for Defendant(s) : 1,3 - 6, 8,
UNSERVED-EXPIRED (R) for Defendant(s) : 2,
RULE SERVED for Defendant(s) : 7, 9,
RULE UNSERVED for Defendant(s) : 10,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 19/01/2006

ORAL JUDGMENT

This Appeal from Order arises out of order passed by learned Civil Judge (S.D.), Ahmedabad Rural, below

application Exh.5 in Special Civil Suits No.238 of 2004, rejecting the said injunction application. The order was passed on 29th April, 2005.

2. The appellants are the plaintiffs in the suits, who claimed right in respect of suit properties on basis of an unregistered agreement to sell executed in the year 2001 by respondent No.1 in their favour. Respondent No.1 executed the said document on basis of a 'Banachithi' executed by respondent No.2 in favour of respondent No.1 in the year 1990. However, it transpires that in the year 1991, a registered agreement to sell was executed by respondents No.2 to 6 in favour of respondent No.7 and on basis of said agreement to sell, a registered sale-deed was executed in favour of respondent No.7 by respondents No.2 to 6 in the year 1999 i.e. prior to execution of the document by respondent No.1 in favour of appellants-plaintiffs. It appears that in the year 1995, respondent No.1 filed a suit against respondent No.2 for specific performance of the said Banachithi which was executed in the year 1990. That suit has been withdrawn on 20/3/2004.

2.1 It appears that on 24/2/2001, a memorandum of

understanding was entered into between the appellants-plaintiffs and respondent No.1, for purchase of suit lands alongwith suit. The present suit was filed on 21/8/2004.

3. A picture that emerges, therefore is, that the plaintiffs-appellants are seeking interim-relief on basis of a memorandum of understanding executed in the year 2001 between the plaintiffs and respondent No.1 for purchase of land alongwith suits. The said memorandum of understanding is founded on whatever rights that respondent No.1 may claim to have acquired on basis of an un-registered banachithi executed in the year 1990. However, before that memorandum of understanding was executed and before the suit was filed in the year 1999, there was a registered agreement to sell executed by respondents No.2 to 6 in favour of respondent No.7 followed by a registered sale-deed in year 1999. The suit filed by respondent No.1 against respondent No.2 in the year 1995, has been withdrawn in the year 2004 before filing of the present suit.

4. Be that as it may, it is not a matter of dispute that by virtue of sale-deed of 1999 in favour of respondent

No.7, the properties stand in favour of respondent No.7 and are in their occupation. It is a question that has to be examined as to what would be the right of plaintiffs allegedly acquired by them from respondent No.1, who claims a right only on basis of a Banachithi of 1990. In the opinion of this Court, the trial Court has taken into consideration all the relevant aspects and has taken a just and legal decision founded on legal reasoning and, therefore, there appears not any reason for interfering with the order in question. The appeal must fail and stands dismissed. In light of order passed in Appeal, Civil Application No.4197 of 2005 is disposed of accordingly. Rule is discharged. No costs.

(A.L.DAVE, J.)

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